TAB B-4

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PAT PAYNE

NO. 08-112

JANE DOE, Individually, and as Next Friend of JULIE DOE, a Minor, Plaintiff, v. MySpace, Inc. Defendants.	§ § § § § § § § § § §	IN THE DISTRICT COURT OF COOKE COUNTY, TEXAS 235TH JUDICIAL DISTRICT

Plaintiffs' First Amended Petition

Plaintiffs JANE DOE, Individually, and as next friend of JULIE DOE, a Minor, complains of Defendant MySpace, Inc., and respectfully shows the Court as follows:

I.
Nature of Action

1. This is a negligence, product liability, intentional infliction of emotional distress, and sexual assault case whereby MySpace provided an unprotected social networking site absent of any legitimate means of preventing contact between sexual predators and minors. A sexual predator, like countless other predators, utilized the site to contact, seduce, meet, assault, and then harass and torment 15 year-old Julie Doe.

II.
Discovery

2. Plaintiffs intend to conduct discovery under a Level 2 Discovery Control Plan.

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PAT PAYNE
DISTRICT CLERK, COOKE COUNTY, TEXAS
By ______ Deputy

III.
Jurisdiction and Venue

3. The Court has jurisdiction over this case because Plaintiffs seek damages well within the jurisdictional limits of the Court and MySpace conducts a substantial amount of business in Texas.

4. Venue is proper in Dallas County because a substantial part of the events or omissions underlying Plaintiff's claims occurred in Cooke County. *See* TEX. CIV. PRAC. & REM. CODE § 15.002(c).

IV.
Parties

5. Plaintiffs reside in California.

6. Defendant MySpace, Inc. ("MySpace") is a Delaware Corporation. MySpace is authorized to conduct and transact business in the State of Texas, and does in fact regularly conduct and transact business in the State of Texas. MySpace can be served through its registered agent Gary D. Roberts, 10201 W. Picoo Blvd., Los Angeles, CA.

V.
Introduction

8. 15 year-old Julie Doe VIII was lured from her home and sexually assaulted by a sexual predator, who communicated with her and ultimately orchestrated his sexual assault of her through the MySpace.com website. Sadly, countless other young MySpace users have suffered the same fate as a result of MySpace's stubborn refusal to institute any reasonable measures to prevent sexual predators from using its website to find vulnerable minors that those predators would not otherwise have been able to find.

9. As a result, MySpace provides a ready means for sexual predators to easily gain direct access to young, innocent children that those predators would otherwise have no ability, or a substantially decreased ability, to locate or contact – and MySpace knows it.

10. In no other aspect of American society is a company permitted to stand idly by while reaping enormous profits from a product that has no reasonable safety measures and which is used by predators to assist them in the commission of one devastating sexual assault after another. Indeed, virtually every State Attorney General has caught onto MySpace's misfeasance and malfeasance; those Attorneys General are now demanding the type of changes to MySpace's policies and practices that, had they been implemented in a reasonable fashion by MySpace, would have prevented the assault that occurred in this case and countless others like it. Those reasonable and eminently achievable changes should have been put into effect *before* this terrible string of attacks occurred, or at the very least as soon as it became apparent that the attacks were occurring. Instead, MySpace delayed, stubbornly refusing to implement *any* reasonable security measures in a timely and effective manner.

11. Plaintiffs bring no claims that involve publishing, altering, or withdrawing content provided by third parties. Plaintiffs simply complain of MySpace's failure to do even the *bare minimum* to reduce the threat of these attacks: implement *reasonable* and *practicable* safety measures that would protect MySpace's most vulnerable users from a terrible threat that MySpace knew was present.

VI.
Facts

An Overview of MySpace

12. MySpace.com ("MySpace") is a social-networking internet website founded in July 2003 by Tom Anderson and Chris DeWolfe. MySpace quickly exploded in popularity and became an online force to be reckoned with. In a few short years, MySpace has amassed more than 100 million registered users worldwide. As of July 11, 2006, MySpace is the world's most visited domain on the internet for internet users located in the United States.

13. In an attempt to capitalize on this success, Tom Anderson and Chris DeWolfe sold MySpace and its parent company, Intermix Media, Inc., to News Corporation for an estimated $649 million.

14. With MySpace's help and contribution, MySpace users create personal profiles. Users are able to view the personal profiles of other users and to use features on the MySpace website to locate and communicate with other users who meet specific search criteria, including for instance age, body type, or school. MySpace's users like Julie Doe IV can easily access and use the site despite MySpace's supposed 16 year-old age limit.

15. To access the MySpace product, a user need only navigate on the internet to the MySpace website, click her mouse, and follow the on-screen prompts. The website asks the user to enter a name, email address, gender, country, postal code, date of birth, and password. The information provided by the user need not be true or accurate, and MySpace does not attempt to verify it. Although children under 14 who accurately enter

their date of birth cannot create an account, it is simple for a child that has been denied access to the site to reenter the same information with a false birth date. MySpace does not have any verification mechanism in place to authenticate a new user's age or identification information.

16. Having created an account and logged on to MySpace, the user is encouraged to enter specific additional personal information to complete the user's profile. Indeed, MySpace collaborates with the user in the development of a fully fleshed-out profile. For example, MySpace's website calculates and provides the user's Zodiac sign. Additionally, a new user sees links on her profile page that leads to prompts for the entry of additional information about "Interests & Personality," "Name," "Basic Info," "Background and Lifestyle," "Schools," "Companies," "Networking," and "Song & Video on Profile." These links lead to other links with questions and menus that solicit further personal information. The information is included and organized by the site on the user's profile. In short, MySpace does not simply publish information provided by others. Rather, MySpace is responsible, at least in part, for creating and developing the information contained on the website and in a user's profile.

17. The website also contains extensive "Search" and "Browse" functions, which allow users to categorize and locate profiles within the MySpace network that contain specific personal information. A user can, for instance, utilize the MySpace functions to view "Men," "Women," or "Both." The user can also search or browse according to any or all of a series of criteria, including an age range, body type, school, or essentially any of the fields of additional information that the site prompts a user to enter when creating and fleshing out a profile.

18. MySpace channels information based on members' answers to various questions, allows members to search only the profiles of members with comparable preferences, and sends email notifications to its members. MySpace is not merely a passive pass-through of information provided by others or a facilitator of expression by individuals. Instead, by categorizing, channeling, and limiting the distribution of users' profiles, MySpace provides an additional layer of information, so that it is responsible, at least in part, for creating or developing the content.

19. Although the site lets users adjust the level of "privacy" on their profile, doing so requires a user to navigate to a specific webpage within the site and actively select a privacy level other than the automatic default setting of "public." When a user's account is created, and unless the user otherwise changes the privacy setting, the user's profile and all of the personal information on it are available for viewing, and can be the subject of the "Search" or "Browse" functions, by any other MySpace.com user.

MySpace is Marketed to Children, And It Poses A Grave Danger to Them.

20. MySpace currently has more than 100 million registered users online. It is also estimated that MySpace has over thirty (30) billion page views per month. The catalyst behind MySpace's popularity is the underage users demographic. MySpace actively and passively markets itself to young girls.

21. MySpace is projected to generate around $200 million dollars in revenue this year, and has the potential to generate much more revenue as MySpace's popularity with young teenagers continues to grow.

22. MySpace has made a decision to not implement reasonable, basic safety precautions with regard to protecting young children from sexual predators.

23. MySpace is aware of the dangers that it poses to underage minors using MySpace. MySpace is aware that its website poses a danger to children, facilitating an astounding number of attempted and actual sexual assaults, including but not limited to:

- In December 2005, a Texas man was arrested for soliciting sex from underage MySpace users. Shortly after, he was arrested again for soliciting sex from minors on MySpace.
- On May 1, 2006, prosecutors in Connecticut charged a 27-year-old man with sexually assaulting a 13-year-old girl he met on MySpace.
- On May 6, 2006, prosecutors in Wisconsin charged a 22-year-old man with six counts of sexually assaulting a 14-year-old girl he met on MySpace.
- On May 12, 2006, a 34-year-old New York man was charged after disseminating indecent material to a minor. He contacted a 14-year-old girl on MySpace, engaged in explicit conversations with her, and was arrested while attempting to meet the girl.
- On May, 15, 2006, prosecutors in Illinois charged a 26-year-old with aggravated sexual abuse and criminal sexual assault of a 16-year-old girl he contacted on MySpace.
- In May 2006, a sting set up by the Texas Attorney General's Office netted the arrests of three adult men attempting to use MySpace to solicit sex from underage MySpace users.
- On May 29, 2006, prosecutors in Cleveland, Ohio, charged two adult men with sexually assaulting a 14-year-old girl they contacted on MySpace.
- In June 2006, prosecutors charged three adult men from Connecticut with numerous counts of sexual assault and risk of injury to a child in connection with incidents involving two girls under the age of 16 that the men met on MySpace.
- In June 2006, prosecutors charged a 21-year-old man with third-degree criminal sexual conduct for having sexual intercourse with a 14-year-old girl he met on MySpace.

- In June 2006, authorities arrested a 44-year-old man from Illinois for soliciting sex from a 14-year-old girl he met on MySpace.
- In 2007, over 29,000 registered sex offenders were discovered to have MySpace profile—many of whom have since been arrested

24. These problems have drawn the ire of politicians, activists, and parents. But MySpace failed and continues to fail to take reasonable meaningful actions protect its most vulnerable members from a danger it knows is present and is fully capable of preventing or, at the very least, limiting.

Plaintiffs Bring No Claims That Implicate the Communications Decency Act.

25. Plaintiffs' claims rest on MySpace's failure to institute reasonable measures to prevent older users from directly searching out, finding, and or communicating with minors. The claims are not content-based.

26. Plaintiffs are not seeking to hold MySpace liable for the republication of defamatory, harmful, or otherwise offensive information originally provided by a third party.

26. Plaintiffs are not seeking to treat MySpace as if it were the speaker or publisher of information that originated from another source.

27. Unlike the plaintiffs' claims in cases like *Gentry v. eBay, Inc.*, 99 Cal.App.4th 816 (2002), Plaintiffs' claims have nothing to do with the content of the communications between Plaintiff and the predator. Rather, Plaintiffs' claims stem from MySpace's failure to provide reasonable safety measures to ensure that sexual predators do not gain access to minors. To be clear, Plaintiffs' claims do not allege liability on account of MySpace's role as a publisher of third-party content or MySpace's exercise of

a publisher's traditional editorial functions over third-party content, such as editing, altering, or deciding whether or not to publish certain third-party material.

The Sexual Assault and continued relationship with 15-Year-Old Julie Doe VIII

28. In 2006, 15-year-old Julie Doe created a profile on MySpace.

29. Through MySpace, she was regularly contacted by an older MySpace member. Using the website as his primary form of communication, the sexual predator began a cyber-relationship with Julie that resulted in a face-to-face meeting and sexual contact in Texas.

30. It was only through MySpace that the predator was able to communicate with and eventually assault Julie Doe.

31. Without question, the Plaintiffs have suffered extreme psychological and emotional trauma from the incident.

CAUSES OF ACTION

32. It is undisputed that MySpace's recent surge in popularity is driven by the onslaught of young underage users joining and using MySpace. To that end, MySpace has a very strong financial incentive to ensure that MySpace's popularity with young underage children remains intact, and continues to increase. MySpace has no financial incentive to institute any meaningful security measures to increase the safety of young underage MySpace users. In fact, MySpace's interest is to ensure that access to MySpace by young underage children remains effortless and unfettered. MySpace has failed to institute reasonable and meaningful protections or security measures to protect young underage users from adult sexual predators on MySpace.

FIRST CLAIM FOR RELIEF

–Defendant MySpace was negligent–

33. Plaintiffs repeat and reallege the allegations contained above as if set forth at length herein.

34. Defendant constructed a website that allows and encourages people of any age to join, disseminate personal information, locate others based on personal information submitted, and indiscriminately communicate with each other. Defendant actively encourages young underage children to join MySpace and indiscriminately interact with adult strangers.

35. Defendant expressly and implicitly represented that its website was safe for young underage users, but Defendant had actual and constructive knowledge that it had failed to implement reasonable and meaningful security measures or policies to effectively safeguard young underage MySpace users from dangerous adult MySpace users.

36. Furthermore, Defendant had actual and constructive knowledge of numerous sexual assaults, attempted sexual assaults of young underage MySpace users by adult MySpace users, and the staggering number of registered sex offenders on its website.

37. Defendant owed a legal duty to 15 year-old Julie Doe to institute and enforce reasonable security measures and policies that would substantially decrease the likelihood of danger and harm that MySpace posed to her.

38. Defendant breached its duty, for instance, by publicly touting the effectiveness of security measures and policies that they knew or should have known

were insufficiently effective in decreasing the likelihood of danger and harm to 15 year-old Julie Doe. Defendant also breached its duty by failing to act to substantially decrease the likelihood of danger and harm to 15 year-old Julie Doe upon gaining actual and constructive knowledge of the danger and harm. For example, Defendant failed to institute readily available and practicable age-verification software or set the default security setting on Julie Doe's account to "private," thereby vastly limiting the terrible threat of harm to her at almost no cost to Defendant.

39. Defendant's breach of its duty proximately caused the sexual assault and rape of 15 year-old Julie Doe. The physical, psychological, and emotional trauma Julie Doe endured is indescribable, and led directly to her death. Defendant is the proximate cause of Plaintiffs' injuries.

40. Plaintiffs seek actual and exemplary damages against Defendant.

SECOND CLAIM FOR RELIEF

–Defendant MySpace's Acts constitute gross negligence–

41. Plaintiffs repeat and reallege the allegations contained above as if set forth at length herein.

42. Defendant has knowingly and purposely ignored the health and safety of young MySpace users in exchange for reaping large profits.

43. Defendant's actions, along with its failures to act, when viewed objectively from their own standpoint, during the timeframe discussed *supra*, involved an extreme degree of risk and callousness, particularly in light of:

- Defendant's actual knowledge, awareness, and conscious indifference of the extreme dangers MySpace posed to young underage MySpace users;

- Defendant's actual knowledge, awareness, and conscious indifference that adult MySpace users were sexually assaulting and/or raping minor MySpace users;
- Defendant's actual knowledge, awareness, and conscious indifference to the warnings given them by politicians, parents, and advocacy groups across the United States;
- Defendant's actual knowledge, awareness, and conscious indifference to the misrepresentations it made to Plaintiffs and the public at large regarding the safety and security of MySpace for young underage MySpace users; and
- Defendant's actual knowledge, awareness, and conscious indifference to not institute even the most minimal and inexpensive of security measures that would have greatly increased the safety of young underage MySpace users from being contacted by, exploited, and sexually assaulted and/or raped by adult MySpace members.

44. Defendant knew there was a likelihood of serious injury and harm to young underage MySpace users, particularly 15 year-old Julie Doe, and there was more than just a remote possibility of injury. Defendant had actual knowledge of other incidents that occurred in nearly the exact same manner as the incidents complained of herein (sexual assaults and/or rapes of young underage MySpace members by adult MySpace members), and to the exact same class of persons (young underage MySpace users).

45. Defendant's actions, along with their omissions to act, demonstrate a conscious indifference and utter disregard for the rights, safety, and welfare of young underage MySpace users, particularly 15 year-old Julie Doe.

46. Plaintiffs seek actual and exemplary damages against MySpace.

THIRD CLAIM FOR RELIEF

–Strict Product Liability–

47. Plaintiffs repeat and reallege the allegations contained above.

48. MySpace developed, designed, manufactured, inspected, distributed, and marketed the MySpace.com website. MySpace's website was defective, which rendered it unreasonably dangerous at the time it was manufactured, supplied, and marketed by Defendant. Specifically, there were no reasonable safety measures in place to protect underage users, including no age verification system and Julie Doe's privacy settings were automatically set to "public" by MySpace.

49. There were safer alternative designs that would have prevented these defects. The safer alternative designs would have prevented or significantly reduced the risk of Plaintiffs' injuries without substantially impairing the MySpace's utility. Furthermore, the safer alternative designs were economically and technologically feasible at the time by the application of existing or reasonably achievable scientific knowledge.

50. MySpace is strictly liable for these design defects and the resulting damages to Plaintiffs under California law. The defective design and manufacture was a producing cause of this incident, and the resulting injuries and damages.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs hereby request that the Court enter judgment in their favor and against Defendant MySpace:

A. That Defendant MySpace be held liable to Plaintiffs for all economic and non-economic damages assessed against them;

B. Jane Doe, individually, recover all medical and psychological counseling expenses that have been incurred and may be incurred in the future;

C. Plaintiffs, Jane Doe, individually, and as next friend of Julie Doe, recover compensatory and exemplary damages for each of Julie Doe's pecuniary loss, mental anguish, psychological trauma, pain and suffering, and emotional distress, in the past and the future, as well as future medical and psychological counseling expenses;

D. Pre- and post-judgment interest on all amounts awarded at the maximum interest rate provided by law;

E. Reasonable and necessary attorneys' fees, expenses and costs of suit as provided by law; and

F. On all claims for relief, punitive damages be assessed and such other further and other relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a trial by jury and the jury fee is paid herewith.

Dated: March 13th, 2008

Respectfully Submitted,

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